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SENATE BILL 581

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO ALCOHOL; PROHIBITING THE RETAIL SALE OF ALCOHOLIC BEVERAGES TO PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; ENACTING A NEW SECTION OF THE LIQUOR CONTROL ACT; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Liquor Control Act is enacted to read:

"NEW MATERIAL PROHIBITED RETAIL SALES--PENALTIES. --

A. It is a violation of the Liquor Control Act for a person who has a conviction for driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978, to purchase alcoholic beverages from a retailer for a period of five years.

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1 B. It is a violation of the Liquor Control Act for
2 a licensed retailer to sell alcoholic beverages to a person who
3 has a conviction for driving while under the influence of
4 intoxicating liquor or drugs, as provided in Section 66-8-102
5 NMSA 1978, for a period of five years.

6 C. In the event a person has subsequent convictions
7 for driving while under the influence of intoxicating liquor or
8 drugs, as provided in Section 66-8-102 NMSA 1978, the person
9 shall not purchase alcoholic beverages from a retailer for a
10 period of five years; provided that the time period does not
11 exceed a total period of five years following the most recent
12 conviction.

13 D. A person who gives, loans, sells or delivers an
14 identification card to a person unable to purchase alcoholic
15 beverages under this section with the knowledge that the person
16 intends to use the identification card for the purpose of
17 purchasing alcoholic beverages is guilty of a petty misdemeanor
18 and shall be sentenced pursuant to the provisions of Section
19 31-19-1 NMSA 1978.

20 E. A person who purchases alcoholic beverages for a
21 person unable to purchase alcoholic beverages under this
22 section is guilty of a petty misdemeanor and shall be sentenced
23 pursuant to the provisions of Section 31-19-1 NMSA 1978. "

24 Section 2. Section 66-5-15 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 237, as amended) is amended to read:

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1 "66-5-15. LICENSES ISSUED TO APPLICANTS. --

2 A. The department shall, upon payment of the
3 required fee, issue to every qualified applicant a driver's
4 license as applied for. The license shall bear the full name,
5 date of birth, current New Mexico physical or mailing address,
6 a full face or front-view photograph of the license holder and
7 a brief description of the licensee and the signature of the
8 licensee. A license shall not be valid unless it bears the
9 signature of the licensee.

10 B. The license shall have a magnetic code, or other
11 marking as determined by the department, that will allow a
12 licensed retailer of alcoholic beverages to determine if the
13 licensee is not authorized to purchase alcoholic beverages as a
14 result of a conviction for driving while under the influence of
15 intoxicating liquor or drugs."

16 Section 3. Section 66-5-23 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 245, as amended) is amended to read:

18 "66-5-23. RECORDS TO BE KEPT BY THE DIVISION. --

19 A. The division shall file every application for a
20 driver's license or a commercial driver's license pursuant to
21 the provisions of the New Mexico Commercial Driver's License
22 Act received by it and shall maintain suitable indexes
23 containing:

24 (1) all applications denied and, on each, note
25 the reasons for denial;

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1 (2) all applications granted;

2 (3) the name of every licensee whose license
3 has been suspended or revoked by the division and, after each,
4 note the reasons for the action; and

5 (4) the name of every licensee who has
6 violated ~~[his]~~ the licensee's written promise to appear in
7 court.

8 B. The division shall also file all abstracts of
9 court records of conviction or reports that it receives from
10 the trial courts of this state or from a tribal court, which
11 show ~~[either that]~~ whether a driver is a first offender or a
12 subsequent offender and whether that offender was represented
13 by counsel or waived the right to counsel, ~~[with attention to]~~
14 and shall comply with the provisions of Article III of the
15 Driver License Compact ~~[and in connection therewith]~~. The
16 division shall maintain convenient records or make suitable
17 notations in order that the individual record of each licensee,
18 showing the convictions of the licensee ~~[in which he has been~~
19 ~~involved]~~, shall be readily ascertainable and available for the
20 consideration of the division upon any application for renewal
21 of license in determining if the licensee is prohibited from
22 the purchase of alcoholic beverages and at other suitable
23 times. "

24 Section 4. Section 66-5-405 NMSA 1978 (being Laws 1978,
25 Chapter 35, Section 332, as amended) is amended to read:

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1 "66-5-405. CONTENTS OF CARD. --

2 A. The identification card shall adequately
3 describe the registrant and bear ~~[his]~~ the registrant's picture
4 that shall show a full face or front view for all registrants
5 and indicate donor status. All identification cards of persons
6 under the age of twenty-one years shall have a printed legend
7 indicating that the person is under twenty-one. The
8 identification card shall bear the following statement:

9 "STATE OF NEW MEXICO IDENTIFICATION

10 CARD NO. _____

11 This card is provided solely for the purpose of establishing
12 that the bearer described on the card was not the holder of a
13 New Mexico driver's license as of the date of issuance of this
14 card. This identification card is not a license. ISSUED FOR
15 IDENTIFICATION PURPOSES ONLY".

16 B. The identification card shall have a magnetic
17 code, or other marking as determined by the department, that
18 will allow a licensed retailer of alcoholic beverages to
19 determine if the holder is not authorized to purchase alcoholic
20 beverages as a result of a conviction for driving while under
21 the influence of intoxicating liquor or drugs."

22 Section 5. Section 66-8-102 NMSA 1978 (being Laws 1953,
23 Chapter 139, Section 54, as amended) is amended to read:

24 "66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING
25 LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE

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1 OF INTOXICATING LIQUOR OR DRUGS--PENALTY. --

2 A. It is unlawful for a person who is under the
3 influence of intoxicating liquor to drive a vehicle within this
4 state.

5 B. It is unlawful for a person who is under the
6 influence of any drug to a degree that renders him incapable of
7 safely driving a vehicle to drive a vehicle within this state.

8 C. It is unlawful for:

9 (1) a person who has an alcohol concentration
10 of eight one hundredths or more in his blood or breath to drive
11 a vehicle within this state; or

12 (2) a person who has an alcohol concentration
13 of four one hundredths or more in his blood or breath to drive
14 a commercial motor vehicle within this state.

15 D. Aggravated driving while under the influence of
16 intoxicating liquor or drugs consists of a person who:

17 (1) has an alcohol concentration of sixteen
18 one hundredths or more in his blood or breath while driving a
19 vehicle within this state;

20 (2) has caused bodily injury to a human being
21 as a result of the unlawful operation of a motor vehicle while
22 driving under the influence of intoxicating liquor or drugs; or

23 (3) refused to submit to chemical testing, as
24 provided for in the Implied Consent Act, and in the judgment of
25 the court, based upon evidence of intoxication presented to the

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1 court, was under the influence of intoxicating liquor or drugs.

2 E. A person under first conviction pursuant to this
3 section shall be punished, notwithstanding the provisions of
4 Section 31-18-13 NMSA 1978, by imprisonment for not more than
5 ninety days or by a fine of not more than five hundred dollars
6 (\$500), or both; provided that if the sentence is suspended in
7 whole or in part or deferred, the period of probation may
8 extend beyond ninety days but shall not exceed one year. Upon
9 a first conviction pursuant to this section, an offender may be
10 sentenced to not less than forty-eight hours of community
11 service or a fine of three hundred dollars (\$300). The
12 offender shall be ordered by the court to participate in and
13 complete a screening program described in Subsection K of this
14 section and to attend a driver rehabilitation program for
15 alcohol or drugs, also known as a "DWI school", approved by the
16 bureau and also may be required to participate in other
17 rehabilitative services as the court shall determine to be
18 necessary. In addition to those penalties, when an offender
19 commits aggravated driving while under the influence of
20 intoxicating liquor or drugs, the offender shall be sentenced
21 to not less than forty-eight consecutive hours in jail. If an
22 offender fails to complete, within a time specified by the
23 court, any community service, screening program, treatment
24 program or DWI school ordered by the court or fails to comply
25 with any other condition of probation, the offender shall be

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1 sentenced to not less than an additional forty-eight
2 consecutive hours in jail. Notwithstanding any provision of
3 law to the contrary, if an offender's sentence was suspended or
4 deferred in whole or in part, and the offender violates any
5 condition of probation, the court may impose any sentence that
6 the court could have originally imposed and credit shall not be
7 given for time served by the offender on probation. Any jail
8 sentence imposed pursuant to this subsection for failure to
9 complete, within a time specified by the court, any community
10 service, screening program, treatment program or DWI school
11 ordered by the court or for aggravated driving while under the
12 influence of intoxicating liquor or drugs shall not be
13 suspended, deferred or taken under advisement. On a first
14 conviction pursuant to this section, any time spent in jail for
15 the offense prior to the conviction for that offense shall be
16 credited to any term of imprisonment fixed by the court. A
17 deferred sentence pursuant to this subsection shall be
18 considered a first conviction for the purpose of determining
19 subsequent convictions.

20 F. A second or third conviction pursuant to this
21 section shall be punished, notwithstanding the provisions of
22 Section 31-18-13 NMSA 1978, by imprisonment for not more than
23 three hundred sixty-four days or by a fine of not more than one
24 thousand dollars (\$1,000), or both; provided that if the
25 sentence is suspended in whole or in part, the period of

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1 probation may extend beyond one year but shall not exceed five
2 years. Notwithstanding any provision of law to the contrary
3 for suspension or deferment of execution of a sentence:

4 (1) upon a second conviction, an offender
5 shall be sentenced to a jail term of not less than ninety-six
6 consecutive hours, forty-eight hours of community service and a
7 fine of five hundred dollars (\$500). In addition to those
8 penalties, when an offender commits aggravated driving while
9 under the influence of intoxicating liquor or drugs, the
10 offender shall be sentenced to a jail term of not less than
11 ninety-six consecutive hours. If an offender fails to
12 complete, within a time specified by the court, any community
13 service, screening program or treatment program ordered by the
14 court, the offender shall be sentenced to not less than an
15 additional seven consecutive days in jail. A penalty imposed
16 pursuant to this paragraph shall not be suspended or deferred
17 or taken under advisement; and

18 (2) upon a third conviction, an offender shall
19 be sentenced to a jail term of not less than thirty consecutive
20 days and a fine of seven hundred fifty dollars (\$750). In
21 addition to those penalties, when an offender commits
22 aggravated driving while under the influence of intoxicating
23 liquor or drugs, the offender shall be sentenced to a jail term
24 of not less than sixty consecutive days. If an offender fails
25 to complete, within a time specified by the court, any

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1 screening program or treatment program ordered by the court,
2 the offender shall be sentenced to not less than an additional
3 sixty consecutive days in jail. A penalty imposed pursuant to
4 this paragraph shall not be suspended or deferred or taken
5 under advisement.

6 G. Upon a fourth conviction pursuant to this
7 section, an offender is guilty of a fourth degree felony and,
8 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
9 shall be sentenced to a term of imprisonment of eighteen
10 months, six months of which shall not be suspended, deferred or
11 taken under advisement.

12 H. Upon a fifth conviction pursuant to this
13 section, an offender is guilty of a fourth degree felony and,
14 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
15 shall be sentenced to a term of imprisonment of two years, one
16 year of which shall not be suspended, deferred or taken under
17 advisement.

18 I. Upon a sixth conviction pursuant to this
19 section, an offender is guilty of a third degree felony and,
20 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
21 shall be sentenced to a term of imprisonment of thirty months,
22 eighteen months of which shall not be suspended, deferred or
23 taken under advisement.

24 J. Upon a seventh or subsequent conviction pursuant
25 to this section, an offender is guilty of a third degree felony

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1 and, notwithstanding the provisions of Section 31-18-15 NMSA
2 1978, shall be sentenced to a term of imprisonment of three
3 years, two years of which shall not be suspended, deferred or
4 taken under advisement.

5 K. Upon any conviction pursuant to this section, an
6 offender shall be required to participate in and complete,
7 within a time specified by the court, an alcohol or drug abuse
8 screening program approved by the department of finance and
9 administration and, if necessary, a treatment program approved
10 by the court. The requirement imposed pursuant to this
11 subsection shall not be suspended, deferred or taken under
12 advisement.

13 L. Upon any conviction pursuant to this section, a
14 person shall not purchase alcoholic beverages from a retailer
15 for a period of five years. In the event a person has
16 subsequent convictions for driving while under the influence of
17 intoxicating liquor or drugs, pursuant to this section, the
18 person shall not purchase alcoholic beverages from a retailer
19 for a period of five years; provided that the time period does
20 not exceed a total period of five years following the most
21 recent conviction.

22 [~~L.~~] M. Upon a second or third conviction pursuant
23 to this section, an offender shall be required to participate
24 in and complete, within a time specified by the court:

25 (1) not less than a twenty-eight-day

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1 inpatient, residential or in-custody substance abuse treatment
2 program approved by the court;

3 (2) not less than a ninety-day outpatient
4 treatment program approved by the court;

5 (3) a drug court program approved by the
6 court; or

7 (4) any other substance abuse treatment
8 program approved by the court.

9 The requirement imposed pursuant to this subsection shall
10 not be suspended, deferred or taken under advisement.

11 [~~M-~~] N. Upon a felony conviction pursuant to this
12 section, the corrections department shall provide substance
13 abuse counseling and treatment to the offender in its custody.
14 While the offender is on probation or parole under its
15 supervision, the corrections department shall also provide
16 substance abuse counseling and treatment to the offender or
17 shall require the offender to obtain substance abuse counseling
18 and treatment.

19 [~~N-~~] O. Upon a first conviction for aggravated
20 driving while under the influence of intoxicating liquor or
21 drugs pursuant to the provisions of Subsection D of this
22 section, as a condition of probation, an offender shall be
23 required to have an ignition interlock device installed and
24 operating for a period of one year on all motor vehicles driven
25 by the offender, pursuant to rules adopted by the bureau.

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1 Unless determined by the sentencing court to be indigent, the
2 offender shall pay all costs associated with having an ignition
3 interlock device installed on the appropriate motor vehicles.

4 If an offender drives a motor vehicle that does not have an
5 ignition interlock device installed on the motor vehicle, the
6 offender may be in violation of the terms and conditions of his
7 probation.

8 ~~[P.]~~ P. Upon a first conviction for driving while
9 under the influence of intoxicating liquor or drugs pursuant to
10 the provisions of Subsection A, B or C of this section, as a
11 condition of probation, an offender may be required to have an
12 ignition interlock device installed and operating for a period
13 of one year on all motor vehicles driven by the offender,
14 pursuant to rules adopted by the bureau. Unless determined by
15 the sentencing court to be indigent, the offender shall pay all
16 costs associated with having an ignition interlock device
17 installed on the appropriate motor vehicles. If an offender
18 drives a motor vehicle that does not have an ignition interlock
19 device installed on the motor vehicle, the offender may be in
20 violation of the terms and conditions of his probation.

21 ~~[P.]~~ Q. Upon any subsequent conviction pursuant to
22 this section, as a condition of probation, a subsequent
23 offender shall be required to have an ignition interlock device
24 installed and operating for a period of at least one year on
25 all motor vehicles driven by the subsequent offender, pursuant

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1 to rules adopted by the bureau. Unless determined by the
2 sentencing court to be indigent, the subsequent offender shall
3 pay all costs associated with having an ignition interlock
4 device installed on the appropriate motor vehicles. If a
5 subsequent offender drives a motor vehicle that does not have
6 an ignition interlock device installed on the motor vehicle,
7 the subsequent offender may be in violation of the terms and
8 conditions of his probation.

9 [Q-] R. In the case of a first, second or third
10 offense under this section, the magistrate court has concurrent
11 jurisdiction with district courts to try the offender.

12 [R-] S. A conviction pursuant to a municipal or
13 county ordinance in New Mexico or a law of any other
14 jurisdiction, territory or possession of the United States or
15 of a tribe, when that ordinance or law is equivalent to New
16 Mexico law for driving while under the influence of
17 intoxicating liquor or drugs, and prescribes penalties for
18 driving while under the influence of intoxicating liquor or
19 drugs, shall be deemed to be a conviction pursuant to this
20 section for purposes of determining whether a conviction is a
21 second or subsequent conviction.

22 [S-] T. In addition to any other fine or fee that
23 may be imposed pursuant to the conviction or other disposition
24 of the offense under this section, the court may order the
25 offender to pay the costs of any court-ordered screening and

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1 treatment programs.

2 ~~[F.]~~ U. As used in this section:

3 (1) "bodily injury" means an injury to a
4 person that is not likely to cause death or great bodily harm
5 to the person, but does cause painful temporary disfigurement
6 or temporary loss or impairment of the functions of any member
7 or organ of the person's body;

8 (2) "commercial motor vehicle" means a motor
9 vehicle or combination of motor vehicles used in commerce to
10 transport passengers or property if the motor vehicle:

11 (a) has a gross combination weight
12 rating of more than twenty-six thousand pounds inclusive of a
13 towed unit with a gross vehicle weight rating of more than ten
14 thousand pounds;

15 (b) has a gross vehicle weight rating of
16 more than twenty-six thousand pounds;

17 (c) is designed to transport sixteen or
18 more passengers, including the driver; or

19 (d) is of any size and is used in the
20 transportation of hazardous materials, which requires the motor
21 vehicle to be placarded under applicable law; and

22 (3) "conviction" means an adjudication of
23 guilt and does not include imposition of a sentence."

24 Section 6. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 2005.